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Hearing

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

11 CR 102 (LAK)

5 VIKRAM DATTA,

6 Defendant.  
7 -----x

8 February 16, 2011  
9 3:00 p.m.

10 Before:

11 HON. LEWIS A. KAPLAN,

12 District Judge

## 13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the  
16 Southern District of New York

17 BY: PETER M. SKINNER

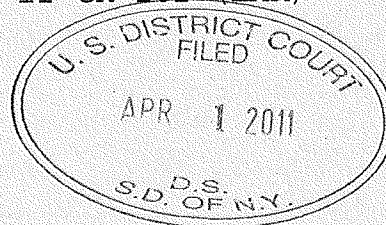
HOWARD MASTER

Assistant United States Attorneys

18 SETH GINSBERG

19 Attorney for Defendant

20 Also Present: Joseph Cerar, ICE Agent



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1 THE DEPUTY CLERK: All rise. Please be seated.

2 (Case called)

3 THE DEPUTY CLERK: Government, are you ready?

4 MR. SKINNER: We are, your Honor. Good afternoon.

5 Peter Skinner for the government, joined at counsel table by  
6 Howard Master, another Assistant in our office, and Joe Cerar,  
7 who is a Special Agent with Immigration and Customs  
8 Enforcement, part of the Task Force that was investigating  
9 Mr. Datta.

10 THE COURT: Okay.

11 THE DEPUTY CLERK: Defendant, are you ready?

12 MR. GINSBERG: Yes. Good afternoon, your Honor. Seth  
13 Ginsberg on behalf of Vikram Datta.

14 THE COURT: All right, Mr. Ginsberg, it's your nickel  
15 I think.

16 MR. GINSBERG: Thank you, sir.

17 Before I begin with my bail argument, one brief  
18 housekeeping matter.

19 I've provided to the Court's Deputy a stipulation  
20 signed by Mr. Richard Albert, who was appointed CJA counsel at  
21 the time of Mr. Datta's presentment. Mr. Datta has also signed  
22 it and I've signed it, and we request that the Court order that  
23 Mr. Albert be allowed to withdraw.

24 THE COURT: Granted.

25 MR. GINSBERG: Thank you.

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1           Your Honor, we request Mr. Datta be released on bail  
2 pending trial. We ask that he be released on home confinement  
3 with electronic monitoring, and we ask that he be released on  
4 bond of \$2 million, secured by collateral consisting of three  
5 properties, two residential properties worth approximately  
6 \$800,000 and a commercial property worth approximately \$1  
7 million. This is not a case in which there is a presumption  
8 against bail.

9           THE COURT: That's property is, all the property, is  
10 it not, that would be subject to forfeiture in the event of a  
11 conviction?

12           MR. GINSBERG: I don't think so, your Honor. One is  
13 the home in which Mr. Datta lives with his wife and children.  
14 That is owned by his wife. It's fully paid off. I don't think  
15 there is any indication that that property is forfeitable. The  
16 other --

17           THE COURT: Does she have an independent source of  
18 income?

19           MR. GINSBERG: I know that she's worked during the  
20 course of her life, and she's been employed by numerous banks  
21 in New York for many years. I don't -- I think recently she's  
22 been working in her husband's company. But prior to her move  
23 to Laredo, Texas in I think '09, she was living in New York and  
24 working, yes, sir.

25           The other property is a property that is owned by

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1 Mrs. Datta and her brothers, here in New York, and that is a  
2 home in which her 82-year-old mother lives, as well as a cousin  
3 who is in her late 60's.

4 THE COURT: All right.

5 MR. GINSBERG: So I don't think either of those  
6 properties is forfeitable.

7 The commercial property, I suppose, would be subject  
8 to an argument of forfeiture, though I don't think that it's a  
9 foregone conclusion at this point that it would be forfeitable.

10 But even if the Court's not persuaded to secure the  
11 bail with that property, the 800,000 plus dollars in equity by  
12 the residential properties I think is still substantial  
13 securitization of the bail.

14 The government bears the burden of proving either by  
15 clear and convincing evidence that Mr. Data is a danger, such  
16 that no combination of conditions can secure the -- can assure  
17 the safety of the community, or that -- or by a preponderance  
18 of the evidence that he's a risk of flight.

19 With respect to the danger. There's a point in the  
20 Government's papers in opposition to our application for bail,  
21 and I think epitomizes the Government's argument. On page two  
22 of the Government's memorandum, it argues that Mr. Datta is a  
23 risk of flight -- excuse me -- is a danger to the community,  
24 and it quotes from a recorded conversation. And it attributes  
25 to Mr. Datta the following statement; "I have to take my money;

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1 it's like, you know, if one f'er is taking money from all over,  
2 we have to kill that f'er." That, I grant you, on its face,  
3 sounds problematic. In the context of the conversation,  
4 however, I think it's a complete misrepresentation of what  
5 Mr. Datta was saying. The conversation is between Mr. Datta  
6 and a customer in Mexico who's purchased perfume from  
7 Mr. Datta, and they're discussing a third person, another  
8 customer who owes Mr. Datta money. And what Mr --

9 THE COURT: And the guy he's talking with is trying to  
10 persuade him not to go after the other guy; right?

11 MR. GINSBERG: Right. And what they're talking about  
12 is retrieving merchandise. Mr. Datta is saying, if he doesn't  
13 pay me, I'm taking my merchandise back. The person with whom  
14 he's speaking says -- excuse me. Mr. Datta said to that  
15 person, tell him to pay me in 15 days or take the merchandise  
16 from him. Later on the person to whom he's speaking says, "If  
17 you send somebody to take that merchandise, my friend, that  
18 merchandise is mine." Apparently, they have some business  
19 relationship, the two customers. The customer goes on to say,  
20 "I don't want somebody to take that merchandise because it's  
21 both mine. I have to depend on that merchandise." Then  
22 Mr. Datta makes the statement about killing the f'er. They go  
23 back on discussing how to deal with the situation.

24 The customer again says, "The best thing I can do I  
25 think give him the merchandise to him. You give him the



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1 merchandise, give him \$10,000." And Mr. Datta says, "I'm not  
2 going to sell him never again in my life, I'm done with him;  
3 it's the third time; once an f'er, always an f'er. I have to  
4 protect my business. You're trying to protect your business,  
5 please don't tell me to destroy my business." There's a few  
6 more exchanges and Mr. Datta concludes by saying, "For you I  
7 have the whole warehouse. For him, I do not even have \$1  
8 credit."

9 There is absolutely nothing in that conversation,  
10 apart from the one statement that the government plucks out of  
11 the conversation, puts into its memorandum --

12 THE COURT: Aside from that, Mrs. Lincoln, how did you  
13 like the show.

14 MR. GINSBERG: I don't think it's equivalent to that,  
15 your Honor.

16 There's one statement, people talk about in arguments  
17 and discussions all the time, I'm going to kill him if I get my  
18 hand on them. They don't mean they're going to kill him.  
19 Everything he's saying in that conversation says, he owes me my  
20 money, I want my merchandise. There's nothing in there that he  
21 says if he doesn't pay me, I'm going to hurt him. They're  
22 talking about retrieving merchandise. And this customer is  
23 pleading with Mr. Datta not to take the merchandise back,  
24 because it's going to harm his business. And Mr. Datta is  
25 insistent that this person has dealt with him dishonorably,

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1 he's not going to be bitten again; he's been deceived two  
2 previous times, and this is a third time, and he's done. I  
3 don't think that the government -- that argument supports the  
4 Government's application.

5 With respect to the risk of flight. There is one  
6 point in the Government's memorandum on page 12 where they say  
7 that Mr. Datta has plans to live abroad. The conversation that  
8 the government attaches to its memorandum, it's a lengthy  
9 conversation, it's the last exhibit of the Government's  
10 memorandum. In that conversation Mr. Datta doesn't say that he  
11 plans to live abroad. At page four of that conversation on the  
12 bottom of the page Mr. Datta says, "I want to open an office in  
13 Panama."

14 I found no indication where he says that he wants to  
15 move to Panama or anywhere else. Mr. Datta, in fact, has  
16 strong ties, if not to New York, to the community in Laredo,  
17 but to New York as well, I submit. He emigrated to the United  
18 States from India 30 years ago, more or less, in the early  
19 1980's. He's a naturalized citizen since 1994. He's an  
20 educated man. He earned his MBA in India. He's been married  
21 to his wife, Michelle, who is here seated in the second row in  
22 the court, for 25 years. They have two children, one of whom  
23 goes to New York University in the City, the other of whom is  
24 23 and lives at home with her parents.

25 One of the homes, as I mentioned, is -- to secure his



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1 bail is a home in New York, in which an 82-year-old lives with  
2 another woman who is 67 or 68.

3 The government talks a lot about ties to other  
4 countries. With respect to Mr. Datta's ties to India, yes, he  
5 has ties to India. He was born there. His father lives there.  
6 He's lived here for 30 years, though. I don't think there is  
7 any indication that Mr. Datta is fleeing back to India. He  
8 moved here on his own volition. That was his choice. He  
9 worked hard to build a business, to start a family, and he  
10 became a citizen. He's not a citizen of India. He holds a  
11 United States passport only, which of course he would surrender  
12 were the Court to grant him bail. He has no particular --

13 THE COURT: How is it that he is not a citizen of  
14 India; did he renounce?

15 MR. GINSBERG: I don't know. It's not been  
16 represented to me, but I can ask him.

17 (Pause)

18 MR. GINSBERG: I'm not clear on exactly the  
19 formalities of the process, but he does not hold a passport in  
20 India. If he wanted to go to India, he would have to obtain a  
21 visa to go to India. He has a U.S. passport. He's a --

22 THE COURT: Or possibly an Indian passport.

23 MR. GINSBERG: Or possibly an Indian passport. But if  
24 my statement of his citizenship in India is somewhat  
25 inaccurate, I'm relying on representations that have been made

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1 to me. I am confident that he has no passport to allow him to  
2 go to India. He owns only a U.S. passport, which he would  
3 surrender.

4 He's lived here a long time. He's not fleeing to  
5 India.

6 In terms of contacts in Mexico, he has business  
7 contacts in Mexico. That's his business. He sells perfume to  
8 Mexicans, Mexican businesses. There is no indication that he  
9 is planning to move to Mexico or Panama or anywhere else. The  
10 indications in the conversations are that he wants to open  
11 offices abroad.

12 In terms of all the money that he supposedly has, the  
13 government seized the vast majority of the liquid assets that  
14 he's had at his disposal. They froze his business bank  
15 accounts. They've drained the money from those accounts. They  
16 claim that he was caught or his employees were caught secreting  
17 \$190,000 in what they call bulk United States currency. I'm  
18 not really sure what the significance of the word "bulk" is.  
19 It's \$190,000 of currency.

20 THE COURT: Suitcases full.

21 MR. GINSBERG: It's not suitcases full, your Honor.  
22 It's the proceeds of a cash business that was continuing from  
23 the time of Mr. Datta's arrest when his bank accounts were  
24 frozen, until February 1st when the agents came to seize his  
25 inventory. In the interim, they had no bank account into which

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1 to deposit the cash that the stores were generating. And it's  
2 my understanding that with that cash were deposit slips,  
3 because it was due to go into a bank. That's their normal  
4 practice. They take the cash each day and they isolate it to  
5 prepare for bank deposit. The banks wouldn't accept the cash  
6 because the government had frozen the accounts.

7 The government also suggests that, well, the banks  
8 were suspicious of Mr. Datta and they were looking to get rid  
9 of him. Not true. As is common, the government subpoenaed  
10 Mr. Datta's banking records. The banks didn't want to deal  
11 with the expense or the headache, and they told him to leave  
12 the bank. He then struggled to try maintain those  
13 relationships. And when the bank asked for verification of the  
14 business that he'd been conducting, he said on tape, the  
15 government quotes, "sure, no problem, absolutely fine." And  
16 they've offered no indication that they have records that show  
17 that actually was a problem, that it wasn't fine.

18 They write in a persuasive manner, I grant you, and  
19 they write with conviction, but there's not a lot of substance  
20 to what they're saying. There are -- it's a lot of inference,  
21 a lot of innuendo. There is not much there.

22 I think the Government's tactics in this case also are  
23 relevant. They arrested Mr. Datta on a Saturday afternoon of a  
24 three day weekend. They brought him to New Jersey and they  
25 held him in a New Jersey jail. And they pressured him, as I

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1 understand it, fairly forcefully, to go out and wear a wire to  
2 try to record other people. Apparently, if they were watching  
3 him, they weren't worried he is going to run off. But they  
4 would have been perfectly comfortable putting a wire on him and  
5 letting him go out and speak to other people in the hopes that  
6 he could record people. He refused to do that. They were,  
7 apparently, unhappy with that decision -- I'm not saying these  
8 Assistants -- but I understand from Mr. Datta there were some  
9 heavy-handed tactics going on at that time. The government  
10 says, well, he indicated that he was trying to interfere with  
11 their investigation because he told his wife, through a third  
12 party in the jail, don't talk to the government. That's just  
13 not true, your Honor. I think this is an actual literal  
14 example of the children's game of telephone. Mr. Datta was  
15 locked for three days without any way to communicate to his  
16 wife. He managed to have another inmate call his wife and tell  
17 her he was in jail, and say -- the message was supposed to be,  
18 if the law enforcement seeks to speak to you, get a lawyer.  
19 Not obstruct justice, not interfere with any kind of  
20 investigation. I have no idea exactly what was said  
21 specifically from the person on the phone to Mrs. Datta, from  
22 Mrs. Datta to the agent, but there was no effort to obstruct  
23 justice. There was no effort to interfere with any  
24 investigation. I think it's a perfectly legitimate message to  
25 say to your wife, when you've been snatched off the street and

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1 thrown in jail without an opportunity to speak to her for three  
2 days, hey, if some law enforcement comes to you, I've been  
3 arrested, get a lawyer.

4 The government also talks about the lengthy sentence  
5 that Mr. Datta faces here. I note just that when he was  
6 presented just a few weeks ago, the government stood before the  
7 Court at that time and said he was facing 108 to 135 months.  
8 That was the Government's guideline calculation. Now they say  
9 he's a level 44 and he's facing life imprisonment, and  
10 certainly the maximum of 40 years on the two counts if he were  
11 convicted. I think perhaps that's an exaggeration aimed at  
12 argument today, and not something on which the Court should  
13 rely.

14 I pointed out in my application that Mr. Datta's been  
15 running his business for approximately 11, 12 years, something  
16 to that effect. And if the allegations are that he was  
17 involved in misconduct for a period of 15 years -- 15 months,  
18 excuse me -- the Government's responded that, well, they  
19 assumed that when they look into his records, they're going to  
20 find out that he's actually been involved in misconduct for a  
21 much longer period of time.

22 Two responses to that, your Honor. First, the  
23 government told us, just last week, that it doesn't anticipate  
24 a superseding indictment in this case. So I'm not sure why  
25 they're so sure that if they look into his records from prior

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1 years, he is going to be found to have been doing this for a  
2 much longer period of time.

3 The second is, any party's always free to come back to  
4 the Court and say the circumstances have changed and that the  
5 bail status of a party should be reconsidered.

6 The evidence before the court now is that he perhaps  
7 was involved in this conduct for 15 months, not for 11 or 12  
8 years. And the Government's speculation, that it's going to  
9 find out evidence of further misconduct, I don't think is  
10 something on which the Court should reasonably rely.

11 That's pretty much where I stand at this point. If  
12 the Court has any questions, I'm happy to answer them. But I  
13 do think that the package that we proposed is sufficient to  
14 ensure both Mr. Datta's presence in court as required, and the  
15 safety of the community. I, frankly, think there's absolutely  
16 no showing that there's been any risk to the community  
17 whatsoever. But I think that the fact that he's willing to  
18 post the homes of his wife and children, and his wife is  
19 willing to put up her mother's home, I think speaks volumes  
20 about what his family thinks about him. The fact that they're  
21 elderly people that live here and that his children live  
22 here -- he's got strong ties. I don't think it's required that  
23 he have strong ties specifically to New York City. He's not  
24 going to any other country. I just don't think the record  
25 shows that. And it's our position the Government's failed to



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1 meet its burden and that Mr. Datta should be released on bail.

2 THE COURT: All right, thank you.

3 I've reviewed the materials, and I've looked at Judge  
4 Cott's decision. And I must say that at least as regards risk  
5 of flight, I agree entirely with Judge Cott's take. If I have  
6 any disagreement with him at all -- and I don't think I do at  
7 this point because I don't think he ever formulated a view on  
8 it -- I'm not so sure that I'd be much more favorably disposed  
9 to release if Mr. Datta were in New York. But I'm surely not  
10 disposed to release him back to Laredo, Texas, within virtual  
11 sight of Mexico. No way.

12 MR. GINSBERG: May I address that, your Honor?

13 THE COURT: Well, you already had your chance, but  
14 I'll allow you if you want.

15 MR. GINSBERG: If the Court is suggesting that it  
16 would be comfortable releasing Mr. Datta in New York, we could  
17 arrange for him to be confined to the home in which his  
18 mother-in-law lives.

19 THE COURT: Well, what I just got finished saying was,  
20 if I had any disagreement with the magistrate judge at all, it  
21 was that I was not as receptive to that idea as he was or may  
22 have been, and he wasn't too receptive. I just don't see it.  
23 I see here somebody as to whom there's very substantial reason  
24 to believe that he's got extensive relationships with the  
25 Mexican drug cartels. He has lived and conducted his business

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1 within sight of Mexico for years. He's got massive incentives  
2 to flee, and given the relationships that appear to exist, in  
3 all likelihood, the means and the assistance to enable him to  
4 do so. I just think he is quite plainly a flight risk. So the  
5 application is denied.

6 Anything else?

7 MR. GINSBERG: No. Thank you, your Honor.

8 THE COURT: Thank you.

9 (Adjourned)

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